

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10519 of 1996

with

SPECIAL CIVIL APPLICATION Nos.10716 of 1996

with

SPECIAL CIVIL APPLICATION Nos.10848 to 10865 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

KARSNA MEGHJI DABHI

Appearance:

MR HS MUNSHAW for Petitioner

MR H.K.Rathod for respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 28/01/97

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr H.K.Rathod for the respondents.

Whether or not the Labour Court under section 33-C(2) of the Industrial Disputes Act, 1947 (ID Act) is competent for passing order after determining the amount of gratuity payable to the workman under the settlement, is the important question raised before this Court in this batch of petitions under Article 226/227 of the Constitution of India. Incidentally it also leads to interpretation and applicability of the provisions of section 7 of the Payment of Gratuity Act, 1972 and the provisions of section 33-C(2) of the ID Act.

The petitioner Gujarat State Road Transport Corporation (Corporation) has questioned the legality and validity of the common order and judgment recorded by the Labour Court, Junagadh, on 28.12.95, in Recovery Applications No.206/94 to 225/94 exercising powers under section 33-C(2) of the ID Act in favour of the respondents workmen. Some of them are retired drivers and conductors. The respondents-workmen by filing Recovery Applications under section 33-C(2) of the ID Act claimed gratuity amount in view of the settlement between the parties. Twenty retired workmen moved the Labour Court for claiming the amount of gratuity payable to them in terms of the settlement. On their superannuation, the computation of amount of gratuity paid by the petitioner Corporation was not in accordance with the settlement. Therefore, the respondents-workmen claimed difference of amount of gratuity paid to them and payable by the petitioner Corporation in terms of the settlement.

The petitioner Corporation resisted the recovery applications. The Corporation also raised the dispute about the jurisdiction of the Labour Court and maintainability of the recovery applications. According to the contention of the petitioner Corporation, in view of the provisions of Payment of Gratuity Act, 1972, the Labour Court has no jurisdiction under section 33-C(2) of the ID Act. It was requested by the Corporation to decide the preliminary issue as to whether the Labour Court has jurisdiction or not.

The Labour Court after considering the facts and circumstances and hearing both the sides and examining the relevant proposition of law, rejected the preliminary contention and allowed the recovery applications holding that it has jurisdiction and it is competent for the workmen to maintain recovery applications under section 33-C(2) of the ID Act in view of the settlement between the parties.

Learned counsel appearing for the petitioner Corporation

Mr. Munshaw has reiterated the said contention for being rejected. The view taken by the Labour Court is quite legal and proper. This Court is satisfied that the ultimate conclusion recorded by the Labour Court is justified.

Placing reliance on the decision of the Apex Court in the case of State of Punjab v. Labour Court, Jullunder, AIR 1979 SC 1981, it was contended that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity and therefore, application for recovery of the amount of gratuity under section 33-C(2) of the ID Act is not maintainable and the Labour Court has no jurisdiction to entertain the recovery applications. This submission, prima facie, may appear to be subtle, but not sound and sustainable. It may be noted that in the case before the Supreme Court, the claim for an amount of gratuity was made under the Payment of Gratuity Act, 1972. The claim was disputed and therefore, an application under section 33-C(2) of the ID Act came to be filed before the Labour Court, Jullunder. The Labour Court made order dated April 30, 1975 that the respondents were entitled to gratuity claimed by them. Writ petition was filed by the employer before the High Court of Punjab & Haryana, which came to be dismissed in limine. The matter was then carried before the Supreme Court by filing an appeal. The appeal was allowed and the order of the Labour Court, Jullunder was quashed.

The ratio of the said judgment is not applicable to the facts of the present case. One should not forget an important fact that the claim of gratuity made by the workmen of the petitioner Corporation is not arising out of Payment of Gratuity Act, but is flowing from the settlement reached between the parties. Obviously, if the claim is made under the Payment of Gratuity Act, the action must be taken under the said Act and not under any other law. It was in that context and factual scenario, the Hon'ble Supreme Court held that an application for recovery of gratuity arising and based on the provisions of the Payment of Gratuity Act was not maintainable. So is not the factual position in the present batch of petitions. It is an admitted position that the respondent workman have been paid the amount of gratuity under settlement on the event of their superannuation, but not full amount in terms of the settlement and therefore, the workmen filed application for recovery under section 33-C(2) of the ID Act claiming difference of amount between the amount paid and payable under the

settlement. Therefore, in the opinion of this Court, the ratio propounded by the Hon'ble Supreme Court in the case of State of Punjab (supra) is not attracted to the facts of the present petitions.

The view of this Court is also very much reinforced by the decision of a Division Bench of this Court in Gujarat State Road Transport Corporation v. Prithviraj Jhala in Special Civil Application No.6226/91 decided on 5.9.91 (Coram: S.M.Majmudar and M.S.Parikh, JJ.). The case of State of Punjab (supra) was also considered by this Court in the said decision. After examining the ratio, it was held by the Division Bench that the said decision is not applicable in a claim for gratuity which is based on settlement and not under the provisions of Payment of Gratuity Act. Consequently, it was clearly held by the Division Bench of this Court that the ratio propounded in the case of State of Punjab (supra) is not applicable. In the circumstances, the said decision of the Supreme Court relied on by the learned advocate for the petitioner Corporation is of no avail to the petitioners in the facts of the present cases.

Section 33-C(2) of the ID Act reads as under :

"33-C. Recovery of money due from an employer:

(1).....

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

Provided that where the president officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Section 33-C(2) is one of the most sought after provisions in the Industrial Disputes Act perhaps next in the use only to section 25-F. The provisions of section

33-C (2) confer very wide powers and discretion on the Labour Court. An aggrieved workman is entitled to collect any money due or to have value of a benefit to which he is eligible computed in terms of money and to recover it from the employer . There is a definite purpose and policy behind the provisions of section 33-C(2). In a case where the right is in existence, flowing from award, settlement, or under the provisions of the statute or by an agreement or any other law, it is open for the party to resort to the provisions of section 33-C(1) or (2) as the case may be applicable for recovery of dues or other benefits in terms of money. The powers of a court exercising discretion under section 33-C(2) is like an executing Court. Therefore, the court concerned under section 33-C(1) or (2) has to incidentally go for computation or for interpretation of the terms and conditions of agreement, contract, settlement or for that purpose any provisions of law, like an executing court interpreting the terms and conditions and tenors of the decree.

It is not in dispute that the respondents-workmen were paid gratuity by the petitioner Corporation on their superannuation. But the grievance of the workmen was that the amount paid was not full and therefore they claimed the difference by filing applications for recovery under section 33-C(2) of the ID Act, wherein, the aforesaid dispute came to be raised by the Corporation which rightly came to be rejected by the Labour Court. The view of this court that application for recovery under section 33-C(2) is maintainable in case of a claim based on a settlement even in case of gratuity is also very much reinforced by a Division Bench decision rendered in Special Civil Application No.6226/91 (supra).

In view of the aforesaid discussions, all the matters are remanded to the Labour Court for consideration, computation and decision applying relevant category and formula out of different formulae which may be applicable to the case of each workman so as to implement the terms of settlement for payment of gratuity. The Labour Court is, therefore, directed to decide after hearing all the parties in accordance with law as expeditiously as possible.

In the meanwhile, petitioner Corporation is directed to deposit the difference of amount of gratuity as per the Labour Court's impugned award within six weeks which will be subject to the final order that may be recorded by the Labour Court. The respondents-workmen will be entitled

to withdraw the said amount of difference as per award on giving an undertaking that in case of their failure before the Labour Court the said amount shall be adjusted from other dues and shall also be refunded if excess by them to the petitioner Corporation. The Labour Court shall bear this aspect in mind and pass appropriate orders. After hearing and considering all the facts and peculiar circumstances , the petitioner Corporation is directed to pay Rs.10,000/(Rs.500 per workman x 20) to the respondent Union towards the lumpsum costs of all the 20 workmen.

In the result the petitions are partly allowed. The matters are sent back to the Labour Court. Rule is made absolute to that extent.

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